

1 LAW OFFICES OF MICHAEL H. LEWIS
2 MICHAEL H. LEWIS (#088742)
25 Kearny St., Ste. 302
San Francisco, CA 94108

3 Telephone Number: (415) 296-1460
4 Fax Number: (415) 788-4315

5 Attorneys for
6 FEED THE METER, LLC

7
8
9
10 UNITED STATES BANKRUPTCY COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12

13 In Re:) Case No. 09-31504
14 FEED THE METER, LLC,)
15 Debtor.) CHAPTER 11
16)
17)
18)
19)
20)
21)
22)
23)
24)
25)
26)
27)
28)

**MOTION TO ASSUME UNEXPIRED
NON-RESIDENTIAL REAL PROPERTY LEASE**

21 TO: THE HONORABLE THOMAS CARLSON, UNITED STATES BANKRUPTCY JUDGE,
22 THE STRAWBERRY VILLAGE RETAIL, LLC, BAYCHESTER SHOPPING CENTER WEST,
23 LLC, CHEESE CENTER OF SAN FRANCISCO, THE UNITED STATES TRUSTEE, THE
TWENTY LARGEST UNSECURED CREDITORS AND OTHER PARTIES REQUESTING
NOTICE:

24 FEED THE METER, LLC (the "Debtor"), the debtor and debtor in
25 possession herein, hereby moves the Court for an order authorizing
26 the Debtor to assume the following unexpired lease of non-

1 residential real property:

2 A. 800 Redwood Highway, Suite 801, Mill Valley,
3 California ("Mill Valley Lease"). The landlord is, or the
4 property is managed by, Strawberry Village Retail, LLC,
5 Shelter Bay Retail Group ("Mill Valley Landlord").

6 B. 1607 Haight Street, San Francisco, California
7 ("Haight Street Lease"). The landlord is, or the property
8 is managed by, Baychester Shopping Center West, LLC
9 ("Haight Street Landlord").

10 C. 3415 California Street, San Francisco, California
11 ("California Street Lease" and together with the Mill
12 Valley Lease and the Haight Street Lease, jointly referred
13 to herein as the "Leases"). The landlord is, or the
14 property is managed by, The Cheese Center of San
15 Francisco, Inc., ("California Street Landlord", and
16 together with the Mill Valley Landlord and the Haight
17 Street Landlord, jointly referred to herein as the
18 "Landlords").

19 The Debtor represents as follows in support of its motion:

20 1. The Debtor's business is the operation of casual
21 restaurants known as Asqew Grill at a number of locations in or near
22 San Francisco, California. Three of its restaurants are located at
23 premises subject to the Leases. Declaration of Mark Nicandri
24 ("Nicandri Declaration"), Paragraph 3.

25 2. Each Lease is an unexpired lease of non-residential real
26 property which the Debtor may assume interest therein is therefore
27 subject to the provisions of Bankruptcy Code §365.

28 4. In the exercise of its business judgment, the Debtor has
29 concluded that the continued operation of these three restaurants is
30 essential to the success of its plan of financial reorganization for
31 a number of reasons including the following:

32 i. The Debtor needs to maintain a minimum number of
33 restaurants in order to support the overhead structure
34 that is necessary to run a small chain of restaurants.
35 Reducing the number of operating restaurants will reduce
36 the Debtor's cash flow without a corresponding reduction
37 in its overhead;

ii. The three restaurants are necessary to maintain the regional presence of the Debtor's restaurant chain. Without the three locations, the Debtor risks losing its unique identity in and appeal to the market place which is likely to result in a downward spiral in its income as customers shift to more visible alternatives;

iii. Continued operation of the three restaurants is necessary to generate the cash flow needed to pay even a portion of the debt the Debtor accrued when it attempted to expand to and operate nine restaurants. Without proportional increase in cash flow resulting from the operation of these three restaurants, the Debtor will not be able to fund its financial reorganization.

iv. The alternative of rejecting the Leases would result in a substantial increase in the total unsecured claims against the Debtor's estate. This fact, coupled with the loss of the cash flow from the three locations, would doom any chance the Debtor has of reorganization.

Nicandri Declaration, Paragraph 5.

5. The Debtor believes that the rents due under each of the Leases is equivalent to the going market rate for comparable properties. Nicandri Declaration, Paragraph 4.

6. Material pre-petition defaults exist with respect to the Mill Valley and Haight Street Leases. The Debtor has negotiated agreements with these two landlords providing for the curing of the arrearages as follows:

A. Mill Valley Lease:

The Debtor's rent under this lease is composed of two components. The first is Minimum Rent and the second is Space Improvement Rent. Pre-petition Minimum Rent and Space Improvement Rent defaults totalled approximately \$27,000 and \$43,400 respectively. The parties' agreement provides that the Minimum Rent default amount will be repaid in twelve, equal monthly installments, while repayment of Space Improvement Rent will be deferred until June, 2010. In addition, the parties have agreed to defer payment of one-half of the current Space Improvement Rent for the six month period beginning August 1, 2009, until June, 2010.

B. Haight Street Lease:

The parties have agreed that pre-petition arrearages in the approximate amount of \$30,000 will be repaid in twenty-four equal monthly installments.

In addition to the above, the Debtor has agreed to provide each of these landlords with additional assurance of its future performance under the Mill Valley Lease and the Haight Street Lease through the addition of its parent company, Ridgewood Restaurants, LLC, as an additional lessee. Nicandri Declaration, Paragraph 6. Upon approval of the Debtor's assumption of these two leases, it will execute amendments to the existing leases setting forth the terms described above.

7. The pre-petition default owing under the California Lease is minor, totalling approximately one-half months rent. The Debtor intends to cure this default upon terms acceptable to its landlord. Nicandri Declaration, Paragraph 7.

8. Post-petition rents for all three leases are believed to be current. Nicandri Declaration, Paragraph 8.

WHEREFORE, based upon the exercise of its business judgment, the Debtor requests this Court to make and enter its order authorizing the assumption of the Leases subject to the amendments set forth above.

Dated: October 30, 2009

LAW OFFICES OF MICHAEL H. LEWIS

/s/ Michael Lewis
Michael H. Lewis
Attorney for Debtor